

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Brief May 24, 2001

JAMES SAYLOR v. TENNESSEE DEPARTMENT OF CORRECTION

Direct Appeal from the Chancery Court for Davidson County
No. 97-2495-II Carol L. McCoy, Chancellor

No. M2000-02118-COA-R3-CV - Filed November 21, 2001

Appellant, a prison inmate, filed an action challenging the Department of Correction's calculation of his sentence. The action was dismissed in the trial court and costs were assessed against Appellant. He petitioned the trial court to rule that he was entitled to claim the personal property exemption provided for in Tenn. Code Ann. § 26-2-103 (2000). The trial court denied this relief and this appeal resulted. We affirm the court below.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY K. LILLARD, J., joined.

James Saylor, *Pro se*.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General and Dawn Jordan, Assistant Attorney General, for the appellee, Tennessee Department of Correction.

OPINION

The record before us does not contain the leading pleading filed by James Saylor against the Tennessee Department of Correction (TDOC). However, the order of the trial court of July 27, 1999 states that Mr. Saylor filed an action challenging the TDOC's calculation of his sentence. The trial court issued an order denying Mr. Saylor's request to file this action in *forma pauperis*. However, the court subsequently entered an order allowing him to pay his filing fee at the rate of \$5.00 per month. Mr. Saylor's appeal from that order to this Court was dismissed due to the fact that the order appealed from was not a final order. *See* Tenn. R. App. P. 3(a).

By order of February 17, 2000, the trial court dismissed the suit for failure to comply with the trial court's previous order regarding payment of filing fees. This order was not appealed.

Mr. Saylor subsequently filed in the trial court a “Motion to Waive Court Costs” and “Motion to Assert Exemption Rights Under Appellate Precedence.” By order of July 19, 2000, the trial court entered an order denying the relief sought. Mr. Saylor then brought this appeal.

We perceive the issue to be whether the appellant, an unsuccessful plaintiff, assessed with court costs and litigation tax, may claim the personal exemption provided for in Tenn. Code Ann. § 26-2-103 (2000). This statute reads as follows:

Personal property to the aggregate value of four thousand dollars (\$4,000) debtor’s equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to the debtor’s vocation or pursuit or to the ownership of the debtor’s abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of fourth thousand dollars (\$4,000) debtor’s equity interest.

Tenn. Code Ann. § 26-2-103 (2000).

This Court has recently ruled on this issue in *Palmer v. Tennessee Department of Correction*, No. M2000-02351-COA-R3-CV, 2001 WL 1386091, (Tenn. Ct. App. Nov. 8, 2001). This Court held:

We have determined that throughout our history the legislature intended that costs of litigation are to be the responsibility of the person instituting the litigation unless relieved thereof by the judgment of the court. This intent is manifested again by the provisions of the 1978 legislation, part of which is the subject exemption statute, indicating that the legislation is directed at defendant judgment debtors. Placing this determination with the explicit provision in the pauper’s oath statute that merely suspends the payment of costs until “taxed by the court,” we reach the conclusion that the legislative intent, as expressed by the ordinary meaning of the language used, is that a person who is allowed to commence a suit without giving security for the costs is not relieved of the obligation to pay the costs by virtue of the exemption statute.

Palmer, 2001 WL 1386091, at *4.

Accordingly, the order of the trial court is affirmed. This cause is remanded to the trial court for such further proceedings as may be necessary. Costs of this appeal are assessed against the Appellant, James Saylor, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE